IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

Crl.L.P..No. 116 of 2007()

CC.272/2005 of J.M.F.C.,KOYILANDY

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PETITIONER/COMPLAINANT:

N.K.KUNHIKANARAN, S/O.KELAPPAN,
NAGATHANKANDY HOUSE, NARATH DESOM,
ULLIYERI AMSOM , KOYILANDY TALUK.

BY ADV. SRI.DILIP MOHAN

RESPONDENTS: STATE/ACCUSED

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1. N.K.BIJEESH, S/O.BHASKARAN,
NAYARUKANDY HOUSE, NARATH DESOM,
ULIYERI AMSOM, KOYILANDY TALUK.

2. STATE OF KERALA REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2- BY P.P.SRI.P.RAVINDRA BABU

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

Crl.L.P.No.116 OF 2007

Dated this the 26th day of February, 2007.

O R D E R

This is an application for special leave to appeal be filed against the judgment of the trial court in C.C.No.272/2005. As per the complaint filed before the court, the 1st respondent borrowed an amount of Rs.50,000/= from the petitioner/complainant and for the discharge of the above debt, the 1st respondent had issued Ext.P1 cheque and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. After complying the statutory provisions regarding notice, the petitioner/complainant filed a complaint before the court. To prove the case against the 1st respondent, the complainant had examined himself as PW1 and produced Exts.P1 to P5. After closing the prosecution evidence, the 1st respondent was questioned under Section 313 of the Code of Criminal Procedure. The 1st respondent had stated before the court that he had no transaction with the complainant and at the same time he

had a case before the court that his father Bhaskaran had taken a loan from one Valsan Nair to whim a cheque was issued by his father Bhaskaran. The petitioner/complainant being an employee of the said Valsan Nair, the cheque issued by Bhaskaran was misused by the complainant and hence the complaint itself is not correct. To prove this case, the 1st respondent himself was examined as DW1. After the trial, the trial court found that the petitioner/complainant could not prove that Ext.P1 cheque was issued by the 1st respondent in discharge of the legally enforcible debt. The trial court also found that the petitioner/complainant was not in a position to raise the amount to give as a loan to the 1st respondent. The trial court also found that the complainant himself was conducting a petty shop for which he has raised amounts from various persons and he is still having a debt of Rs.15,000/= with the Bank. The trial court found that the case set up by the 1st respondent is more probable than the case of the petitioner. In the above circumstances, the trial court acquitted the 1st respondent.

After going through the judgment of the trial court and the contention raised by the learned counsel for the

petitioner/complainant, this Court is of the view that the judgment of the trial court is on evidence and it requires no interference by this Court. Accordingly, special leave to appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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